

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re: )  
 )  
WORLDCOM, INC., *et al.*, )  
 )  
Debtors. ) **CHAPTER 11**  
 ) **CASE NO. 02-13533 (AJG)**  
 ) **(Jointly Administered)**

**ORDER DENYING DEBTORS' MOTION FOR ORDER  
NUNC PRO TUNC REJECTING AGREEMENT**

This cause coming to be heard on the Debtors' Motion for Order Nunc Pro Tunc Rejecting Agreement Between WorldCom, Inc. and Kennedy and Associates (the "Motion"), the Court having considered: (i) the Motion; (ii) Kennedy & Associates, Inc.'s Objection to the Motion ("Response"); (iii) Debtors' Reply to the Response; and (iv) argument of respective counsel for Kennedy & Associates, Inc. and the Debtors, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that the Motion is denied for the reasons stated in open court on February 28, 2006, as fully transcribed in Exhibit A, attached hereto; and

IT IS HEREBY FURTHER ORDERED that a status conference on Kennedy & Associates, Inc.'s claim and Debtors' objection thereto is scheduled for April 25, 2006 at 10:00 a.m.

DATED: \_\_\_\_\_, 2006  
New York, New York

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Honorable Arthur J. Gonzalez,  
United States Bankruptcy Judge

# Exhibit A

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AS CORRECTED AND MODIFIED BY THE  
COURT ON 2/28/2006

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----x

In re  
WORLD COM, INC., et al, Case No. 02-13533

Reorganized Debtors.

-----x  
February 28, 2006

United States Custom House  
One Bowling Green  
New York, New York 10004

E X C E R P T

10:05 02-13533 WORLD COM, INC., ET AL  
DECISION TO BE RENDERED

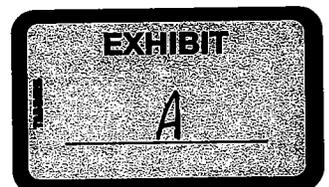
Motion filed by the Debtors for an order nunc  
pro tunc rejecting agreement between  
WorldCom, Inc. and Kennedy & Associates.

Response by Kennedy & Associates, Inc. filed.

B E F O R E:

THE HONORABLE ARTHUR J. GONZALEZ  
United States Bankruptcy Judge

DEBORAH HUNTSMAN, Court Reporter  
198 Broadway, Suite 903  
New York, New York 10038  
(212) 608-9053 (917) 723-9898



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A P P E A R A N C E S:

STINSON MORRISON HECKER LLP  
Special Counsel for Reorganized  
Debtors  
1201 Walnut Street  
Kansas City, Missouri 64106

BY: SARA E. WELCH, ESQ.  
(via telephone)

UNGARETTI & HARRIS LLP  
Attorneys for Kennedy & Associates  
3500 Three First National Plaza  
Chicago, Illinois 60602

BY: ALEX PIROGOVSKY, ESQ.  
(via telephone)

-and-  
DEAN POLALES, ESQ.  
(via telephone)

1 Proceedings

2 (Whereupon, the following is an  
3 excerpt from 2/28/2006 in In re WorldCom,  
4 Inc., et al, case no. 02-13533.)

5 JUDGE GONZALEZ: You may be seated.

6 With respect to the first matter in  
7 WorldCom, Kennedy & Associates?

8 MR. PIROGOVSKY: Yes. Alex  
9 Pirogovsky on behalf of Kennedy & Associates.

10 MR. POLALES: With Dean Polales.

11 MS. WELCH: Sara Welch on behalf of  
12 the Debtors.

13 JUDGE GONZALEZ: All right. I am  
14 going to read a decision into the record.

15 \* \* \* \*

16 Before the Court is the Debtors'  
17 Motion for Order Nunc Pro Tunc Rejecting  
18 Agreement Between WorldCom, Inc. and Kennedy  
19 & Associates, dated August 5, 2005 (the  
20 "Motion"). The Debtors contend that if an  
21 executory contract actually does exist  
22 between the parties, the required standards  
23 have been met to grant nunc pro tunc  
24 rejection of a contract between Kennedy &  
25 Associates, Inc. ("Kennedy") and the Debtors











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Proceedings

disputes arising under Section 5.12 or  
6.18 of the Plan; ...

(l) To resolve any Disputed Claims;  
...

(n) To hear any other matter not  
inconsistent with the Bankruptcy Code; ...  
(Plan Para. 12.01.) The Debtors assert that  
nunc pro tunc rejection of the Alleged  
Contract would constitute an exercise of this  
Court's retained jurisdiction. The Court  
disagrees, and specifically addresses the  
retentions provided under sections 12.01(c),  
(l) and (n) of the Plan.

The Court retains jurisdiction to  
hear and determine objections to claims under  
Section 12.01(c) of the Plan and to resolve  
any disputed claims pursuant to Section  
12.01(l) of the Plan. While the actions the  
Debtors seek to take under the Motion are  
tangentially related to a claim objection,  
they do not constitute an objection to a  
claim or the resolution of a disputed claim.  
Rather, the Debtors seek to create a set of  
facts (rejection of the Alleged Contract)





## 1 Proceedings

2 See3 In re Greater Southeast, 327 B.R. at 30 ("The

4 order confirming the plan slightly modified

5 the plan by making the Humana executory

6 contracts deemed assumed by the reorganized

7 debtors as of the effective date of the plan,

8 and by providing that the reorganized debtors

9 ... could decline to assume the executory

10 contracts if the cure amounts were

11 unacceptable, with the executory contract to

12 be 'deemed rejected' upon the reorganized

13 debtors so declining to assume.") As

14 previously discussed, the Debtors' Plan makes

15 no comparable post-confirmation retention of

16 such right. Similarly, in the case of In re17 Gunter Hotels, 96 B.R. 696 (Bankr. W.D. Tex.

18 1988), while citing to a general plan

19 provision allowing the court to hear and

20 determine all matters relating to the plan,

21 the court's ruling to extend the deadline to

22 reject a contract until sixty days after

23 confirmation was made prior to the

24 confirmation of the plan itself (and was

25 presumably incorporated into the confirmation

## 1 Proceedings

2 order.) See Gunter Hotel Assocs., 96 B.R. at  
3 701 (extending the deadline for seeking  
4 rejection for 60 days past the effective date  
5 of confirmation). Indeed, the Court has been  
6 unable to locate case law on the issue in  
7 which some acknowledgment of the debtors'  
8 rights to act post-confirmation was not made  
9 prior to confirmation of the plan.

10 The Debtors also cite to several  
11 cases as authority for permitting the use of  
12 nunc pro tunc relief in the context of  
13 Section 365 of the Bankruptcy Code. However,  
14 these cases do apply in the post-confirmation  
15 context, as Section 365 of the Bankruptcy  
16 Code specifically relates to assumption or  
17 rejection "at any time before the  
18 confirmation of a plan." 11 U.S.C. Section  
19 365(d)(2). Furthermore, as pointed out by  
20 Kennedy, all relate to extension of the  
21 60-day deadline for unexpired leases of real  
22 property. As stated in the case of In re GST  
23 Telecom, Inc., 2001 WL 686971 (D.Del. June 8,  
24 2001), courts have recognized that Congress  
25 did not intend that debtors be granted only







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Proceedings

will familiarize myself with the discovery  
issue and you can address it again at that  
time.

MR. POLALES: Thank you, Your  
Honor.

THE OPERATOR: Thank you, Your  
Honor.

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C E R T I F I C A T E

STATE OF NEW YORK        )  
                                  : SS:  
COUNTY OF NEW YORK     )

I, DEBORAH HUNTSMAN, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That the within is a true and accurate transcript of the Digitally Recorded Proceedings recorded on the 28th day of February, 2006.

I further certify that I am not related by blood or marriage to any of the parties and that I am not interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of March, 2006.

---

DEBORAH HUNTSMAN

AS CORRECTED AND MODIFIED BY THE COURT ON 2/28/2006

\*\*PROOFREAD BY HALLIE CANTOR  
\*\*PROOFREAD BY YA'AKOVAH WEBER